

Judge Mathias, cont.

topics to attorneys and judges. As a member of the Judicial Technology and Automation Committee, he helped select the Odyssey Case Management System that brought the management of state court records into the 21st Century.

Judge Mathias is a longtime supporter of *We the People*, a national civics education program sponsored in Indiana by the Indiana Bar Foundation. He coaches high school *We the People* teams in Indiana's 5th Congressional District and helps organize *We the People* competitions in the 3rd Congressional District.

In 2010, he received the Indiana Bar Foundation's William G. Baker Civic Education Award for his work in civics education.

Judge Mathias has been married for more than 36 years and is the proud father of two sons who teach at the high school level. His wife, Carlabeth, is a private practice counselor for children and families and a consultant to schools throughout Indiana.

Judge Mathias enjoys Macintosh computers, technology in general and photography. He also enjoys spending many Saturdays during the school year helping to build theatrical sets for Hamilton Southeastern High School.

Judge Bradford, cont.

Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference.

He is a Senior Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management. Judge Bradford currently serves as an adjunct instructor in forensic science and the law at Indiana University Purdue University Indianapolis.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. Judge Bradford regularly attends St. Luke's United Methodist Church. He and his wife, a full-day kindergarten teacher, have five children.

Why the judge wore black

Black robes as judicial garb is a centuries-old tradition with obscure roots. There are variations.

Judges on Maryland's highest court wear red robes. Former United States Chief Justice William Rehnquist added gold stripes to his sleeves – on his own volition.

"I always heard that the reason we wear robes is because we represent uniform justice and not our individual proclivities," Judge Margret G. Robb says.

That principle also applies to such ensembles as symphony musicians, soldiers and graduates. In those ensembles, the individual is less important than the group, although standouts are recognized in other ways.

Tradition, not rules or laws, are behind the relative uniformity of judicial garb.

All of Indiana's current Supreme Court and Court of Appeals judges wear unadorned black robes, although some of the women sometimes wear collared blouses.

Senior Judge Betty Barteau says she always wore a white judicial collar when she was a full time member of the court, but as a trial court judge she occasionally wore navy or dark green robes.

For the record, robes are reserved for court and ceremonial events. Around the office, judges dress like the rest of us.

Attorneys for the Parties

John T. Wilson was born and raised in Anderson. After graduating from Indiana University, he attended and graduated from Ohio Northern University Law School.

He has worked as a Public Defender, handling adult criminal cases, juvenile cases, Children in Need of Services, and Termination of Parental Rights cases where he served as lead counsel on multiple bench and jury trials.

He has also handled numerous criminal appeals and has argued before the Court of Appeals of Indiana and the Indiana Supreme Court. He currently has a private law office in Anderson, where he has practiced for 26 years.

He is married with three children and two grandchildren. He and his wife enjoy ballroom dancing.

Graham T. Youngs was raised in Zionsville and attended Wabash College where he received his B.A. *magna cum laude* in philosophy in 2011. In 2014, Graham received his J.D. *cum laude* from the Indiana University Robert H. McKinney School of Law in Indianapolis where he was inducted into the Order of Barristers, and finished as a semi-finalist in the Evan A. Evans Constitutional Law National Moot Court Competition.

His Note, *Piracy in Somalia: A Legal Analysis Concerning the Prosecution of Pirate Negotiators and Pirate Facilitators under the current U.S. and International Framework* 24 Ind. Int'l & Comp. L. Rev. 809 (2014), was selected for publication.

During law school, Graham worked in the Hendricks County Prosecutor's Office, clerked for Boone County Judge Matt Kincaid, and served as a research assistant to Professor John Hill. Graham is admitted to practice in Indiana, as well as the U.S. District Courts for the Northern and Southern Districts of Indiana.

He currently serves as a fellow in the Office of the Indiana Attorney General.

SYNOPSIS

On Nov. 28, 2012, Madison County Drug Task Force Officer Leann Dwiggin was investigating methamphetamine activity in Anderson, and as a part of that investigation, she was attempting serve an arrest warrant on Christopher Douglas. Officer Dwiggin learned that Douglas might be hiding in an apartment located at 2325 Broadway.

Detective Cliff Cole proceeded to the apartment at that address, which was leased to Tony Julian. As Detective Cole approached the front door, he noticed an odor that he associated with the manufacture of methamphetamine.

The detective knocked on the front door and announced his presence. Julian responded and identified himself without opening the door. Julian also told Detective Cole that Douglas was not inside the apartment and denied the detective's request to enter his apartment.

Given the danger inherent in manufacturing methamphetamine, Detective Cole determined that it was necessary to enter Julian's apartment to ensure the safety of the apartment's residents and neighbors.

Another detective with the task force assured Detective Cole that it was permissible to enter the apartment due to the safety risks inherent in manufacturing methamphetamine.

Detective Cole returned to the front door of the apartment and knocked. He asked Julian to open the door. When Julian refused, the detective told him that he had three seconds to open the door before the detective forced it open.

Julian opened the door and Detective Cole entered the apartment. The chemical smell that he associated with the manufacture of methamphetamine was strong. Detective Cole and accompanying officers located Douglas hiding inside a bathroom in the apartment. Julian stated that he was not aware that Douglas was inside his apartment.

Detective Cole continued to search the apartment because due to the strength of the odor, he believed that either methamphetamine had been recently manufactured or there was an active methamphetamine lab inside the

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Court of Appeals of Indiana

*Hearing oral argument at
Cathedral High School, Indianapolis
Monday, April 20, 2015 @ 1:15 p.m.*



Julian v. State
48A02-1407-CR-477

*On Appeal from Madison Circuit Court
The Honorable Thomas Newman, Jr., Judge*

Synopsis, cont.

residence.

In a closet, Detective Cole located a backpack and a green tote. He opened the lid to the tote and unzipped the backpack. There, the detective found a methamphetamine kit, i.e. funnels, pliers, a hair dryer, and Coleman fuel. In the kitchen, the detective found a trash bag where the odor was especially strong. Through the plastic bag, Detective Cole saw what he believed to be a “one pot” methamphetamine lab. Julian told the officers he did not know that the items were in his apartment.

Julian then gave the officers permission to search the rest of the apartment, and they found 3.02 grams of methamphetamine in Julian’s bathroom. The officers also found stripped lithium batteries and casings, soiled coffee filters, a strainer, a plastic bottle with a tube running from it, lye, drain opener, more bottles of Coleman fuel, and rock salt. All of these items are commonly used in the manufacture of methamphetamine.

Julian was charged with Class B felony dealing in methamphetamine, Class D felony possession of methamphetamine, Class D felony possession of chemical reagents or precursors with the intent to manufacture a controlled substance, Class D felony maintaining a common nuisance, and Class A misdemeanor false informing. A jury trial was held on May 15, 2014.

At trial, Douglas testified that he and Julian had an agreement that Douglas could manufacture methamphetamine in his apartment in exchange for one-half gram of the resulting methamphetamine. Douglas stated that Julian was in the apartment when he began the manufacturing process, but left the apartment for approximately 40 minutes.

Julian testified that he allowed Douglas to stay in the apartment but did not know that Douglas was manufacturing methamphetamine until he returned to the apartment a few minutes before the police arrived.

The jury returned a guilty verdict on

all counts except Class D felony possession of methamphetamine. The trial court ordered Julian to serve an aggregate 10-year sentence for his convictions for Class B felony dealing in methamphetamine, Class D felony possession of chemical reagents or precursors with the intent to manufacture a controlled substance, Class D felony maintaining a common nuisance, and Class A misdemeanor false informing.

Julian appeals his convictions and initially argues that Detective Cole violated his Fourth Amendment rights under the United States Constitution and Article One, Section Eleven of the Indiana Constitution when the detective entered his apartment without a warrant.

But Julian failed to object to the admission of the contraband and methamphetamine found during the warrantless search. Therefore, he argues that the trial court committed fundamental error when it admitted the seized items into evidence, and he was denied a fair trial.

Finally, Julian argues that his convictions are not supported by sufficient evidence because the State failed to prove that he actually or constructively possessed the contraband found in his apartment.

The State argues that Detective Cole did not violate Julian’s constitutional rights because the warrantless entry was permissible under the exigent circumstances exception to the warrant requirement.

In other words, because the detective reasonably suspected that methamphetamine was being manufactured in the apartment, he was allowed to enter the apartment to ensure the safety of its occupants and persons nearby. Therefore, the State contends that the trial court did not commit error, fundamental or otherwise, when it admitted the contraband seized during the warrantless search.

Finally, the State argues that it proved both that Julian was Douglas’s accomplice and that he constructively possessed the contraband found in his apartment.

Fast Facts about the Court

■ The Indiana General Assembly created a temporary appellate court in 1891 and a permanent Appeals Court in 1901. In 1971, voters approved a constitutional amendment making the Court of Appeals of Indiana a constitutional court.

■ The Court hears cases in three-judge panels that rotate three times per year. Cases are never assigned to a single judge, and all cases are randomly assigned.

■ Including judges serving senior terms, 135 judges have served the Court since its inception. Their photos are displayed against the north wall of the Statehouse on the fourth floor. Judge James B. Black (1838-1916) was the Court’s first chief judge.

■ Because the Indiana Constitution provides “an absolute right to one appeal,” the Court of Appeals considers more than 2,000 cases each year. The Indiana Supreme Court need not consider every appeal, so it decides about 100 cases per year.

■ Eight women and three African Americans have served on the Court. Current Chief Judge Nancy H. Vaidik is the court’s second female chief judge.

■ The court decides most cases without holding oral argument. In 2013, for example, the court issued 2,058 majority opinions and heard 71 oral arguments.

■ The court considers and decides about twice as many criminal cases as civil cases each year.

■ The Court of Appeals affirmed trial court decisions in 80 percent of its cases in 2013. By case type, the affirmation rate was 86 percent of criminal cases; 91 percent of post-conviction relief petitions; and 63 percent of civil cases.



The Honorable Paul D. Mathias

Allen County

Paul D. Mathias is a fifth-generation Hoosier who deeply believes that Indiana is a special place to live. He is honored to serve on the Court of Appeals, where he strives daily to reflect and protect Hoosier values within the law.

Judge Mathias practiced law in Fort Wayne, concentrating in construction law, personal injury, and appellate practice. He was appointed Referee of the Allen County Small Claims Court in 1985 and served as Judge of the Allen Superior Court from 1989-2000 when he was appointed to the Court of Appeals. In 2002 and 2012, he was retained by election to the court.

Judge Mathias’s professional achievements are rooted in a strong educational foundation. He attended the public schools in Fort Wayne, where he was a National Merit Finalist and scholarship recipient. In 1976 Judge Mathias graduated *cum laude* from Harvard University with a bachelor’s degree in General Studies, concentrating in Government. He earned his law degree in 1979 from Indiana University School of Law-Bloomington, where he was a member of the Sherman Minton Moot Court Team and the *Order of Barristers*.

Judge Mathias was an officer of the Indiana Judges Association from 1993-1999 and its president from 1997-1999. He is deeply honored to be one of only 92 Hoosiers to receive the Centennial Service Award from the Indiana State Bar Association, and he was named a Sagamore of the Wabash by two governors. Judge Mathias is keenly interested in the intersection of law and technology and often consults and speaks on tech

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Today’s Panel of Judges



The Honorable James S. Kirsch

Marion County

James S. Kirsch was appointed to the Court of Appeals in 1994, was retained by election in 1996 and 2006 and served as Chief Judge from 2004-2007. He also has served as a state trial court judge and has extensive national and international teaching experience.

A native of Indianapolis, Judge Kirsch graduated from Indiana University School of Law-Indianapolis (J.D., cum laude) and Butler University (B.A. with honors).

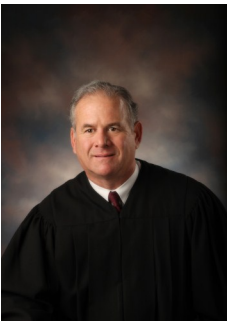
He served as Judge of the Marion Superior Court from 1988 to 1994 and as Presiding Judge of the Court in 1992. From 1974-1988, he practiced law with the firm of Kroger, Gardis & Regas in the areas of commercial and business litigation and served as managing partner of the firm.

Since 1990, Judge Kirsch has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University. He has taught law in 21 countries on four continents and currently holds university-level faculty appointments in Germany, Hungary and the Netherlands.

Judge Kirsch is also committed to continuing legal education and has served on the faculty of more than 200 CLE programs. In 1990, the Indianapolis Bar Association presented him with its highest award, the Honorable Paul H. Buchanan Award of Excellence.

Judge Kirsch also has deep ties to the Indiana State Bar Foundation, the Indianapolis Bar Association and Bar Foundation and to community organizations that include the United Way of Central Indiana, the Indianapolis Urban League, the Legal Aid Society of Indianapolis and the Stanley K. Lacey Leadership Foundation.

Judge Kirsch and his wife, Jan, have two children.



The Honorable Cale J. Bradford

Marion County

Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county’s response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county’s Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor’s Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals’ liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana

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What happens after the Court of Appeals hears oral argument?

After oral argument, a designated “writing judge” drafts an opinion for the panel’s consideration. Opinions usually affirm or reverse lower court rulings in whole. But some affirm in part, reverse in part, or both. Often the opinion instructs the trial court about next appropriate steps. Many opinions are unanimous, although 2-1 votes are not uncommon. Judges sometimes write separate concurring or dissenting opinions that emphasize different points of law or facts than the main opinion. Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason.